



July 26, 2017

Ms. Karen G. Sabasteanski
Virginia Department of Environmental Quality
P.O. Box 1105
Richmond, VA 23218

RE: NOIRA to Establish a New Regulation to Reduce and Cap Carbon Dioxide from Fossil Fuel Fired Electric Power Generating Facilities by Means of an Interstate Trading Program (Revision C17)

Dear Ms. Sabasteanski:

The Southern Environmental Law Center (“SELC”) and the Virginia League of Conservation Voters are pleased to submit the following comments on the Virginia Department of Environmental Quality (“DEQ”) Notice of Intended Regulatory Action to “Establish a new regulation to reduce and cap carbon dioxide (“CO₂”) from fossil fuel fired electric power generating facilities by means of an interstate trading program.”

SELC applauds Governor McAuliffe and his staff for demonstrating strong leadership in Virginia by recognizing carbon emissions for what they are – a global threat that must be met head on at the local level. In the absence of any legitimate leadership at the federal level on this issue, it is imperative that the states take action.

Against that backdrop, SELC offers the following recommendations to help guide DEQ as it drafts the proposed regulation:

Covered Sources

The final regulation should cover any electric power facility that emits carbon dioxide, regardless of fuel type, size, or date of construction and operation. Governor McAuliffe’s Executive Directive 11 (“ED 11”) clearly states his desire that the proposed regulation should “abate, control, or limit carbon dioxide emissions from electric power facilities.” As is well documented, the only way to meaningfully achieve reductions in total statewide carbon emissions is to cover all sources of carbon emission. If the regulation covers only currently-operating power plants, it will create a market perversion that incentivizes shifting generation to new power plants that the regulation does not cover. Not only will this shift undercut the fundamental purpose of reducing total emissions, it will also impose wholly unnecessary construction costs on Virginia electric customers as power generators invest billions of dollars of capital in otherwise redundant power plants.

Likewise, the regulation should be blind to fuel type. To ensure complete reductions, the regulation should apply with equal force to any power plant that emits carbon.¹

Finally, the regulation's scope should apply more broadly than the federal Clean Power Plan ("CPP"). As can be seen from Dominion Energy's 2017 Integrated Resource Plan, the Company now proposes to build between 1,374 MW and 2,290 MW of new gas-powered combustion turbines ("CTs").² CTs are far less efficient than state-of-the-art natural gas combined cycle plants, but because the now-defunct CPP did not apply to CTs, there existed a perverse incentive to build less-efficient power plants solely because they fell outside the CPP's orbit.³ The DEQ should not allow this regulation to create similar market distortions and should cover all substantial carbon-emitting power plants. For instance, DEQ could follow the Regional Greenhouse Gas Initiative ("RGGI") and require all carbon-emitting power plants above 25 MWs to comply with the cap.

Stringency of Cap

Governor McAuliffe recently announced his intention to join the U.S. Climate Alliance, a coalition of states committing to voluntarily comply with the carbon reduction goals established by the Paris Climate Agreement. Further, ED 11 expressly mandates that the regulation establish "abatement mechanisms providing for a corresponding level of stringency to limits on carbon dioxide emissions imposed in other states with such limits." Such a clear directive leaves DEQ little room. Considering that RGGI is the only other comparable state-based program, the Virginia cap must therefore be at least as stringent as RGGI's cap. This makes perfect sense, considering that ED 11 also requires that the proposed regulation be "trading-ready." Virginia will not be able to trade with RGGI without an equivalently strict cap. Finally, whatever cap DEQ initially sets cannot be permanent; DEQ should – at regular intervals – review the program and, if necessary, ratchet down the cap over time to ensure that Virginia continues to reduce its carbon emissions.

Allowance Allocation Methodology

DEQ's primary goal in drafting a carbon reduction regulation should be to achieve the greatest level of carbon emissions reduction in the most economically advantageous way for customers. Multiple efforts to model price impacts to customers in a carbon-constrained world demonstrate

¹ In the published Notice of Intended Regulatory Action, DEQ titled the action as an effort to "[e]stablish a new regulation to reduce and cap carbon dioxide (CO₂) from fossil fuel fired electric power generating facilities by means of an interstate trading program." (emphasis added). Executive Directive 11 contains no such language limiting the regulation to "fossil fuel fired" generating units. The proposed regulation should cover all carbon-emitting power plants, regardless of fuel type.

² See *Application of Virginia Electric and Power Company in re: Virginia Electric and Power Company's Integrated Resource Plan* filing pursuant to Va. Code § 56-597 et seq., Case No. PUR-2Q17-00051 at 13.

³ The CPP did not apply to CTs. 80 Fed. Reg. 64661, 64716 (Oct. 23, 2015) (to be codified at 40 C.F.R. pt 60) ("[W]e are finalizing that States need not include certain units that would otherwise meet the CAA section 111(b) applicability in this CAA section 111(d) emission guidelines. These include simple cycle turbines, certain non-fossil units, and certain combined heat and power units.").

that, if done properly, carbon regulations can actually reduce customer bills.⁴ The manner in which DEQ allocates emissions allowances will play a central role in determining ratepayer impacts. To keep allowance prices low over the long term while simultaneously maximizing, DEQ should consider allowance banking.

There are multiple ways in which DEQ could allocate allowances. It could directly auction them, and then direct the auction proceeds into carbon reduction and climate change mitigation efforts such as customer directed energy efficiency efforts or sea level rise projects. It could allocate allowances at zero cost to electric distribution companies but then require those companies to buy and sell all of those allowances in a consignment auction, with the additional requirement that the distribution companies use any surplus revenue from the auction to reduce their carbon emissions. DEQ could also follow the CPP model and set aside a certain number of allowances for renewable and energy efficiency projects. Additionally, regardless of how DEQ allocates allowances, DEQ's methodology must ensure that all entities requiring allowances have equal access to the allowance market. Whatever the final allocation scheme, it cannot allow one entity to hoard allowance, thus distorting the market and creating inequities among the various power generators in the Commonwealth.

Whatever the final allocation methodology turns out to be, the method that is by far the least protective of Virginia electric customers is one in which the state's heaviest polluters receive windfall profits as a result of this regulation. For instance, this could result if DEQ allocates allowances to generators based on non-updating, historic carbon emissions without any requirement that the generators use allowance sale revenues to reduce their emissions.

Environmental Justice Concerns

The program should have a positive or neutral impact on frontline/environmental justice communities. Cap-and-trade programs for other types of pollutants have not always addressed the disproportionately heavy burden they place on communities living close to fossil fuel infrastructure. Fortunately, an allowance market is unlikely to create "hot spots" of carbon pollution in frontline communities, because carbon dioxide is not harmful in locally higher concentrations. However, as the cap for carbon emissions is lowered, it will create additional benefits of reducing associated co-pollutants that cause health problems in communities close to their source. Developers of a carbon market need to ensure that these benefits are shared equitably and address the concerns of environmental justice advocates.

Carbon Offsets

DEQ should not include carbon offsets as a compliance mechanism. Carbon offset programs are very often difficult and costly to adequately verify and the amount of carbon they sequester can be hard to measure as accurately as emissions. The program should be robust, while being as

⁴ See, e.g., Direct Testimony of Starla Yeh (Aug. 17, 2016), *Application of Virginia Electric and Power Company in re: Virginia Electric and Power Company's Integrated Resource Plan filing pursuant to Va. Code § 56-597 et seq.*, Case No. PUE-2016-00049 at 14:2-4 ("The CPP is expected to have modest cost and energy impacts for Virginia and its residents, with the potential for Virginians' to benefit under the CPP from both lower bills and reduced air pollution.").

easy to administer and as transparent as possible. An offset component complicates, if not, undermines those characteristics.

Respectfully submitted,



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